

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE**

**August 4, 2005**

**IN RE:**

**APPLICATION FOR APPROVAL OF THE TRANSFER  
OF CONTROL OF CYPRESS COMMUNICATIONS  
OPERATING COMPANY, INC. FROM CYPRESS  
COMMUNICATIONS HOLDING CO., INC. TO  
TECHINVEST HOLDING COMPANY, INC.**

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**DOCKET NO.  
04-00417**

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on June 27, 2005 for consideration of the *Application for Transfer of Control* ("Application") filed on December 2, 2004 by Cypress Communications Operating Company, Inc. ("Cypress Operating"), Cypress Communications Holding Co., Inc. ("Cypress Holding"), and TechInvest Holding Company, Inc. ("THC") (together the "Applicants"). The Applicants sought TRA approval pursuant to Tenn. Code Ann. § 65-4-113 (2004) for a transfer of authority to provide telecommunications services.

**Background and Application**

Cypress Operating is a wholly owned subsidiary of Cypress Communications, Inc. ("Cypress Communications"), which in turn is a wholly owned subsidiary of Cypress Holding (all three jointly referred to as "Cypress"). The TRA granted Cypress Operating authorization to become an operator service provider and/or reseller of telecommunications services statewide in Tennessee by an Order dated August 5, 2002 in TRA Docket No. 02-00763. Cypress Operating

received additional authority by Order dated October 1, 2003 in TRA Docket No. 03-00316, in which the TRA granted Cypress Operating a Certificate of Public Convenience and Necessity (“CCN”) to provide resold and facilities-based local and interexchange telecommunications services.

Cypress is a provider of bundled telecommunications services to small and medium-sized businesses located in multi-tenant buildings. Specifically, Cypress offers its customers: local, long distance, and international telecommunications services; high-speed internet connectivity; e-mail services; fully-managed firewall services; web hosting; virtual private networks; feature-rich digital desktop stations; calling cards, audio and web conferencing; and digital business television. Although Cypress Operating delivers these services over the in-building networks it owns and operates, the company obtains external transmission facilities and other network elements and telecommunications services from other carriers.

The *Application*, filed December 2, 2004, described a series of transactions through which THC would acquire Cypress, including Cypress Operating. THC is a newly formed Delaware corporation, established to effect the purchase of Cypress, and is an indirect subsidiary of Arcapita Bank B.S.C.(c) (“Arcapita”).<sup>1</sup> Arcapita is a joint stock company organized under the laws of Bahrain and headquartered in Bahrain, with United States and United Kingdom subsidiary offices in Atlanta and London. Arcapita has a paid-in share capital of approximately \$154,000,000 and operates under an investment banking license granted by the Bahrain Monetary Agency. Arcapita currently has a portfolio that consists of ten (10) United States companies in various sectors including manufacturing, services, and technology.

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<sup>1</sup> When the *Application* was filed in this docket, Arcapita was known as First Islamic Investment Bank, B S.C (c) (“FIIB”). By letter dated April 15, 2005, the Applicants notified the Authority that FIIB had changed its name to Arcapita and that several FIIB subsidiaries involved in the transactions and identified in the *Application* had changed as well Crescent Capital Investments, Inc. became Arcapita, Inc ; First Islamic Investment Management Limited became Arcapita Investment Management Limited, and FIIP Limited became Arcapita Incentive Plan Limited

In the United States, Arcapita operates through Arcapita Inc., an indirect and wholly owned subsidiary primarily engaged in organizing investments for the benefit of Arcapita and Arcapita's clients. Arcapita, Inc. identified, structured and executed the acquisition of Cypress.

TechInvest Acquisition, Inc. ("Merger Corporation") is a newly formed Delaware corporation and wholly owned subsidiary of THC. Merger Corporation was incorporated for the sole purpose of consummating the transactions described in the *Application*.

On November 5, 2004, Merger Corporation, THC and Cypress Holding entered into an Agreement and Plan of Merger (the "Merger Agreement") pursuant to which Merger Corporation would merge with and into Cypress Holding. Cypress Holding would be the surviving corporation and ultimately would become a direct, wholly owned subsidiary of THC. The ownership structure of THC would result in no person holding interests sufficient to constitute a 10% or greater equity or voting interest in Cypress upon completion of the transactions. The existing shareholders of Cypress Holding would receive cash in an amount equal to \$39,350,000 as part of the Merger Agreement.

The proposed transactions would not change the existing inter-corporate relationships among Cypress Operating, Cypress Communications, and Cypress Holding. Cypress Operating would continue to be the actual provider of telecommunications services and direct holder of the CCN in Tennessee. THC, however, would acquire the ultimate ownership and control of Cypress Operating. The transactions therefore would result in a *pro forma* transfer of Cypress Operating's authority to provide telecommunications services in Tennessee.

According to the *Application*, Arcapita would finance the merger in part through funds raised in offering shares in offshore investment companies ("Shares Offering"). In connection with the Shares Offering, THC would issue 18.99% of its non-voting common stock to each of four (4) Cayman Island entities (collectively, the "Non-Voting Cayman Entities"), for a total

issuance of 75.96% to the Non-Voting Cayman Entities. After closing, Arcapita would sell interests in the Non-Voting Cayman Entities through a Shares Offering to “non-U.S. persons.”<sup>2</sup>

Arcapita would obtain additional financing for the merger through a Shares Offering to Arcapita Incentive Plan Limited (“AIP”), the corporate vehicle for participation in THC by Arcapita and Arcapita, Inc. employees. THC would issue 3.28% of its non-voting common stock to AIP. After completing the transactions with the Non-Voting Cayman Entities and AIP, Arcapita would retain no more than 18.76% of the non-voting stock in THC through a wholly owned indirect subsidiary, TechInvest Holdings Limited.

All the voting stock of THC would be held by fifteen (15) Cayman Island entities (collectively, the “Voting Cayman Entities”), with the voting stock divided equally among them. Accordingly, each Voting Cayman Entity would individually hold approximately 6.67% of the voting interest of THC. Ownership of the Voting Cayman Entities would be held by approximately fifty (50) international investors.

On November 12, 2004, the Applicants filed an application with the Federal Communications Commission (“FCC”) under Section 214 of the Communications Act of 1934, as amended, seeking approval of the transaction with respect to Cypress’s interstate and international telecommunications services. The FCC assigned the matter IB File No. ITC-T/C-20041112-00448 and WC Docket No. 04-418.<sup>3</sup> On December 3, 2004, the United States Department of Homeland Security (“DHS”), on behalf of itself, the United States Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”) (collectively, the “Federal Agencies”), filed a petition asking the FCC to defer grant of the application until the Federal

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<sup>2</sup> *Application for Transfer of Control*, p. 7 (December 2, 2004).

<sup>3</sup> See *In the Matter of Cypress Communications Operating Company, Inc Application for Consent to Transfer of a Company Holding International Authorizations and a Blanket Domestic Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ID File No ITC-T/C-20041112-00448, WC Docket No 04-418, *Application* (November 12, 2004), [http://gulfoss2.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi) (enter 04-418 in the “Proceeding” search category) (“*In re Cypress*, WC Docket No 04-418”).

Agencies completed an evaluation of potential national security, law enforcement and public safety issues that may be associated with the proposed transfer.<sup>4</sup>

During the evaluation period, DHS identified potential concerns with the transfer as proposed. The Applicants revised the proposed transactions to address the concerns. They submitted the changes to the FCC through letters dated January 13, 2005 and March 21, 2005.<sup>5</sup>

In the first amendment, the Applicants changed the structure of the voting stock. The Voting Cayman Entities, which were to be owned by approximately fifty (50) international investors, would not hold the voting stock. Instead, the stock would be held in equal shares by five (5) United States citizens.

In the second amendment, the Applicants changed the ownership structure of the non-voting stock of THC. Under the revised structure, all ownership interests in the Non-Voting Cayman Entities would be held by Arcapita Investment Holdings Limited ("AIH") and would not be made available to "non-U.S persons" as originally proposed.<sup>6</sup> As a result, upon consummation of the transaction, Arcapita would hold over 96% of the equity interests in THC (through AIH) and thus indirectly over 96% of the ownership interests in Cypress.<sup>7</sup>

On April 15, 2005, the Applicants supplemented their *Application* with the TRA. In the supplement, they described the proposed changes and included copies of their letters to the FCC.

On June 21, 2005, the Applicants and the Federal Agencies filed with the FCC a Joint Petition to Adopt Conditions to Authorizations and Licenses ("Joint Petition") in WC Docket

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<sup>4</sup> *Id.*, *Petition to Defer* (December 3, 2004).

<sup>5</sup> *Id.*, *Amendment Letter* (January 13, 2005), *Amendment Letter* (March 29, 2005)

<sup>6</sup> *See Application for Transfer of Control*, p. 7 (December 2, 2004).

<sup>7</sup> The Applicants also clarified information they had provided about ownership of Arcapita. They had stated that one (1) shareholder held approximately 10.5% of the ownership interest in Arcapita. They clarified the statement by noting that the 10.5% ownership actually was held by two separate entities with a number of common owners. Although the two entities together arguably could be deemed to hold a 10% or greater ownership interest in Cypress, none of the common owners of the two entities held a 50% or greater ownership interest in both entities and, thus, no common owner would hold a 10% or greater ownership interest in Cypress after completion of the transactions.

No. 04-418.<sup>8</sup> Attached as Exhibit 1 to the Joint Petition was an agreement (“Joint Petition Agreement”) between Cypress Holding, THC, Arcapita, and Arcapita Investment Management Limited, on the one hand, and DHS, DOJ, the FBI and the United States Department of the Treasury, on the other hand. The Federal Agencies advised the FCC that they did not object to the FCC granting the transfer of control of Cypress provided the FCC conditioned the grant on compliance with the terms of the Joint Petition Agreement.

#### **June 27, 2005 Authority Conference**

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

At the June 27, 2005 Authority Conference, the voting panel found that the Applicants complied with the requirements of Tenn. Code Ann. § 65-4-113 (2004) and that the proposed transfer of authority and control of Cypress Operating to THC was consistent with Tenn. Code Ann. § 65-4-113 (2004). The panel also found that approval of the *Application* should be conditioned on approval of the FCC in WC Docket No. 04-418 in accordance with the Joint

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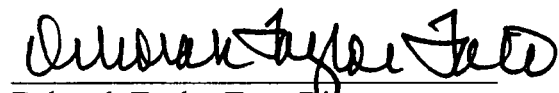
<sup>8</sup> *In re Cypress*, WC Docket No. 04-418, *Joint Petition to Adopt Conditions to Authorizations and Licenses* (June 21, 2005) The Applicants filed a copy of the Joint Petition with the TRA in this docket on June 22, 2005

Petition submitted in that docket. Based on these findings, the panel voted unanimously to approve the transfer of authority contingent on approval of the FCC and subject to the Applicants' compliance with the terms of the Joint Petition Agreement.

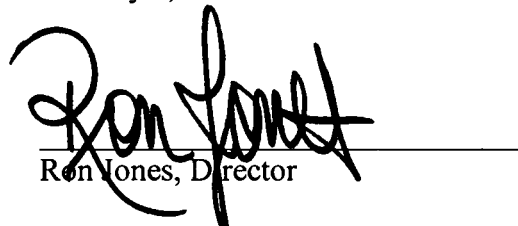
**IT IS THEREFORE ORDERED THAT:**

1. The proposed transfer of the ownership and control of Cypress to THC, and the resulting *pro forma* transfer of authority to provide telecommunications services in Tennessee, as described herein and in the *Application*, as supplemented and amended, is approved on the condition that the FCC grants authorization for the transfers in WC Docket No. 04-418 and subject to the Applicants' compliance with the terms of the Joint Petition Agreement filed with the FCC in WC Docket No. 04-418.

2. The Applicants shall file with the TRA a copy of any order entered by the FCC in WC Docket No. 04-418.<sup>9</sup>

  
Deborah Taylor Tate, Director

  
Sara Kyle, Director

  
Ron Jones, Director

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<sup>9</sup> On June 28, 2005, the FCC issued a Public Notice reflecting that it had granted the requested authorizations in WC Docket No. 04-418. The Applicants filed a copy of the Public Notice with the TRA in this docket on June 29, 2005.